

## **APPENDIX A**

### **Disposition of Motions by the Clerk**

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Pursuant to Cir. R. 27-7, the Court has delegated the authority to decide the following motions to deputized court staff. Unless otherwise noted, a motion can be acted upon by a deputy clerk, staff attorney, circuit mediator or appellate commissioner. Orders are subject to reconsideration pursuant to Cir. R. 27-10.

- (1) to file lesser number of briefs;
- (2) to file handwritten or typewritten brief;
- (3) to consolidate;
- (4) by United States or state to file late amicus brief (if unopposed);
- (5) to hold oral argument in a specific location;
- (6) to substitute party under Fed. R. App. P. 43(a) or (c);
- (7) to grant unopposed motions to substitute federal agencies;
- (8) to file addendum or appendix;
- (9) to transfer records and briefs to new appeal;
- (10) to adopt brief;
- (11) to stay appellate proceedings (may grant only if based on pending court or agency action and periodic status reports are required; if based on settlement negotiations, may grant only if stay is limited to six months);

- (12) for withdrawal or substitution of counsel in civil cases;
- (13) to supplement record or brief;
- (14) for extension of time;
- (15) to file oversized brief;
- (16) to transmit less than all of the record in civil cases;
- (17) to permit the district court to correct clerical mistake in district court judgment;
- (18) to remand in civil cases to enable district court to rule on post-judgment motion (clerk may grant if unopposed and if movant has complied with Crateo, Inc. v. Intermark, Inc., 536 F.2d 862, 869 (9th Cir. 1976); clerk may deny if movant has not complied with Crateo);
- (19) to intervene as of right in agency review proceedings;
- (20) to strike brief;
- (21) to expedite;
- (22) to transfer under 28 U.S.C. § 2112(a) (if non-discretionary);
- (23) to deny a motion to proceed in forma pauperis as unnecessary when pauper status continues under Fed. R. App. P. 24(a);
- (24) to grant a motion to withdraw a previously filed motion;

(25) to grant an unopposed motion to file a document under seal when the document was maintained under seal below, the seal is required by law or filing under seal is necessary to preserve the provisions of a protective order entered below.

(26) to grant appellant's unopposed motion to voluntarily dismiss a criminal appeal and denying as moot other pending motions, provided that the motion includes appellant's written consent as required by Ninth Circuit Rule 27-9.1;

(27) to deny without prejudice to refiling, appellant's unopposed motion to voluntarily dismiss a criminal appeal if the motion does not include defendant's consent as required by Ninth Circuit Rule 27-9.1;

(28) to deny without prejudice to refiling, motions to be relieved as appointed counsel in a criminal appeal when the motion fails to state a reason for the request to be relieved or is not accompanied by a signed statement from the client;

(29) to correct the caption or add parties when the motion seeks to remedy a clerical error by this court;

The Clerk has discretion to refer any of the above motions to a single judge, an appellate commissioner, a circuit mediator, an appropriate motions attorney for presentation to a motions panel, or a merits panel.

The Clerk is authorized to enter orders referring to the merits panel motions:

- (30) to file an amicus brief;
- (31) deny oral argument;
- (32) to set aside waiver of oral argument;
- (33) to join in oral argument;
- (34) to submit without oral argument;
- (35) to take judicial notice;
- (36) for imposition of sanctions;
- (37) filed after a pattern of frivolous, repetitive motions has been established.

The Clerk may issue for the court the following orders:

- (38) *sua sponte* order to show cause or to provide information on jurisdiction;
- (39) *sua sponte* order to show cause in attorney discipline matter under Fed. R. App. P. 46(b) and to strike from the attorney roll those attorneys who voluntarily resign or who fail to respond to an order to show cause;
- (40) order granting National Labor Relations Board's unopposed motion to withdraw application without prejudice, denying as moot other pending motions, and providing for no costs if it appears that none were incurred by appellee or respondent;

(41) order granting National Labor Relations Board's unopposed application for enforcement upon stipulation and denying as moot other pending motions;

(42) order granting National Labor Relations Board's motion for entry of default (unless opposed on grounds other than timely filing of answer) and denying as moot other pending motions;

(43) order denying National Labor Relation Board's motion for entry of default where respondent has timely answered application for enforcement;

(44) order granting or denying appellant's or petitioner's unopposed motion to dismiss a civil case and denying as moot other pending motions;

(45) orders granting or denying appellant's or petitioner's unopposed motion to dismiss a civil case without prejudice to reinstatement upon the occurrence of stated conditions if the order provides that notice of reinstatement must be filed within 28 days after the occurrence of those conditions;

(46) orders granting timely motions for reinstatement of a civil appeal or petition previously dismissed without prejudice to reinstatement upon the occurrence of a stated condition or event;

(47) order dismissing an appeal for want of prosecution under Ninth Circuit Rule 42-1 and dismissing any pending motions as moot;

(48) order staying issuance of mandate in petitions dismissed without prejudice and without issuance of mandate pursuant to the American Baptist Church settlement agreement;

(49) order dismissing as premature a notice of appeal filed during the pendency of a timely post-judgment motion with a second, timely notice of appeal has been filed subsequent to disposition of the motion;

The Clerk has discretion to refer any of the above motions to a single judge, an appellate commissioner, a circuit mediator, an appropriate motions attorney for presentation to a motions panel, or a merits panel.

The circuit mediators and motions attorneys shall have the same authority to act on procedural motions as the Clerk, and shall additionally be authorized to issue the following orders for the court:

(50) orders granting unopposed motions for attorney fees;

(51) orders staying appellate proceedings based on pending settlement negotiations for more than six months if periodic status reports are required;

(52) orders granting stipulations or unopposed motions to remand cases to administrative agencies;

(53) orders granting stipulations or unopposed motions to remand a case to the district court for consideration, approval and/or implementation of a settlement agreement;

(54) orders denying untimely petitions under 28 U.S.C. § 1292(b) when the petition is filed more than ten days after the district court's certification;

(55) orders denying untimely motions for reconsideration of a motions panel order (if the motions attorney believes that the motion for reconsideration, although untimely, deserves review, he/she shall forward the motion to the panel with the customary proposed recommendation.

(56) orders dismissing duplicative notices of appeal when the record is clear that two or more appeals have been taken from the same order or judgement;

Certified motions attorneys are authorized to enter orders referring to the merits panel motions:

(57) to dismiss an appeal for lack of jurisdiction that involves legal issues intricately bound up in the merits of the appeal;

(58) involving issues pending before an en banc panel;

(59) to certify issues to a state court;

(60) to withdraw as appointed counsel pursuant to Anders v. California, 386 U.S. 738 (1967), in criminal cases and set a due date for a pro se supplemental brief.

The conference or motions attorney has discretion to refer any of the above motions to a single judge, an appellate commissioner, or a motions panel.